

Waivers	First Name	Last Name	Claim Number
			W-17-0001
Amount	OGC Received Date	Assigned To	Assigned Date
\$3600.21	02/02/2017	ann sisson	02/02/2017
EPA Decision	EPA Decision Date	Amount Approved	Status
APPROVED	09/17/2017	\$3600.21	CLOSED
Appeal	Comments		
No			
Type			
Retroactive Promotion and WIGI			

Attachments

Dear [REDACTED]:

This email is in response to your February 2017 letter requesting a waiver of repayment in the amount of \$3,600.21. For the reasons set forth herein, your request for waiver is approved.

Briefly stated, on 9/26/16, you entered into a settlement agreement with the Agency in connection with a grievance filed by you in June 2015. One term of the agreement provided that the Agency would provide a retroactive promotion from a GS-13 to a GS-14. Specifically, the Agency agreed to process an SF-50 which would adjust the effective date of your promotion to 05/30/2015 in order to compensate you in accordance with the Back Pay Act for the difference in pay for the period between May 30, 2015 and September 2016. The agreement did not specify what step level would apply in processing the retroactive promotion.

According to the lead human resources specialist in EPA's Cincinnati office, the retroactive promotion, effective 5/30/2015, generated a within-grade increase (WIGI action or step increase), effective 5/31/15, that was processed in error taking you from a 14/02 to a 14/03. In hindsight, the WIGI action should not have been processed, and your back pay should have reflected a 14/02 pay rate, rather than the miscalculated 14/03 pay rate, or \$3,600.21 less than what you received. The issue wasn't detected and corrected until December 2016, which is what created the debt you have now incurred.

In reviewing the record, it appears that two SF-50s were approved on 9/29/16. The first shows the retroactive promotion from 13/05 to 14/02, effective 5/30/15, noting in the remarks section: "entitled to back pay under 5 U.S.C. 5596." The second shows a step increase from 14/02 to 14/03, effective 5/31/15, noting in the remarks section: "entitled to back pay under 5 U.S.C. 5596. Corrects item number 19 from 02." Number 19 on the SF-50 is the step level. By email dated 1/3/2017, a human resources

specialist indicated that the step increase (the second SF-50) should not have been processed at the time because employees can “not receive two promotions within two days.”

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he or she was being overpaid. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error. Therefore, the only issue before me is whether you knew or should have known that you were receiving more pay than you were entitled to receive.

In this case, my review of the record and my discussions with human resources indicate that you did not know that you were being overpaid and could not reasonably have been aware that you were being overpaid. I find that your reliance on the Agency to set the correct salary in this instance was reasonable. When an employee has been assigned to the wrong step within a grade based upon a promotion, demotion, or the assumption of a new position, the Comptroller General has usually waived any resulting overpayments. B-211166, August 25, 1983. The reason for this is that most employees cannot reasonably be expected to know the details of the pay regulations governing personnel actions. Furthermore, these personnel actions are generally not accompanied by any pay records, pay regulations, and/or guidance which would, on their face, evidence assignment to the wrong step within a grade. Thus, under these circumstances, a waiver is warranted because the employee could not reasonably have been expected to know or suspect he or she was being overpaid. B-198760, April 27, 1981. In your case, it appears even the resource specialists who processed the retroactive grade promotion and then the step increase were not aware of the proper back pay establishment rules. Moreover, I think a reasonable person would believe that an SF-50 that indicates it is a correction, as yours did, would conclude that it was indeed a corrected calculation of the back pay to which that person were entitled. Based on these circumstances, I find that you could not have reasonably known that you were receiving more pay than you were to have received as a result of your settlement. Accordingly, all the criteria for waiver of this claim have been met, and this request for waiver is approved in the amount of \$3,600.21. In this regard, OCFO should work with the Interior Business Center to waive repayment and to refund to you any money that was already paid by you toward this debt.

If you have any questions, please contact Ann Sisson of this office at (202) 564-5469.